

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ANDREW RENE LEVESQUE,

Plaintiff,

v.

9:22-CV-0753
(DNH/TWD)

CLINTON COUNTY ELECTION BOARD,

Defendant.

APPEARANCES:

ANDRE RENE LEVESQUE

Plaintiff, pro se

22-B-2864

Auburn Correctional Facility

P.O. Box 618

Auburn, NY 13021

DAVID N. HURD

United States District Judge

ORDER

Pro se plaintiff Andre Rene Levesque ("Levesque" or "plaintiff") commenced this action on July 5, 2022, by filing a complaint for relief pursuant to 42 U.S.C. § 1983 and an application to proceed in forma pauperis. Dkt. Nos. 1 ("Compl."); 6 ("IFP Application").

In a Decision and Order filed September 8, 2022 (the "September 2022"), the Court denied plaintiff's IFP Application pursuant to the three-strikes provision of 28 U.S.C. § 1915(g). Dkt. No. 9. Plaintiff was afforded thirty days to pay the filing fee in order to avoid dismissal of this action. *Id.* On October 11, 2022, for good cause shown, the Court granted plaintiff an additional sixty days to pay the filing fee in order to avoid dismissal. Dkt. No. 12.

Plaintiff has not paid the required filing fee. See *generally* Docket Report. Presently

before the Court is plaintiff's motion to withdraw the complaint without prejudice. Dkt. No. 13.

Rule 41(a) of the Federal Rules of Civil Procedure provides in relevant part that a plaintiff "may dismiss an action without a court order by filing . . . a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment." FED. R. CIV. P. 41(a)(1)(A). Rule 41(a) further provides that unless the notice provides otherwise, "the dismissal is without prejudice." FED. R. CIV. P. 41(a)(1)(B).

As of the date hereof, plaintiff has not paid the filing fee and, as a result, the Court has not considered the sufficiency of the complaint pursuant to 28 U.S.C. § 1915A(b) or directed service on defendants. Plaintiff is therefore entitled to withdraw this action pursuant to Federal Rule of Civil Procedure 41(a)(1)(A).

Therefore, it is

ORDERED that

1. In accordance with plaintiff's motion (Dkt. No. 13) to withdraw his complaint, the Clerk of the Court close this case and reflect that the action is voluntarily **DISMISSED** without prejudice pursuant to Rule 41(a)(1)(A) of the Federal Rules of Civil Procedure; and

2. The Clerk of the Court serve a copy of this Decision and Order on all plaintiff in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: December 5, 2022
Utica, New York.


United States District Judge